

REMARKS/ARGUMENTS

Favorable reconsideration of this application in view of the above amendments and in light of the following discussion is respectfully requested.

Claims 1-65 are presently pending in this case, with Claims 12-14, 17, and 39-58 withdrawn from consideration. The present Amendment amends Claims 1, 12, 24, and 33; and adds Claims 59-65 without introducing any new matter.

In the outstanding Office Action, Claims 1, 4, 7, 10, 24-27, and 30-32 were rejected under 35 U.S.C. § 102(b) as anticipated by Callowhill (U.S. Patent No. 1,744,681); Claims 1, 8, 9, 11, 15, 16, and 19-21 were rejected under 35 U.S.C. § 102(b) as anticipated by Hamilton (U.S. Patent No. 4,184,603); Claims 2-3, 5, 6, and 35-38 were rejected under 35 U.S.C. § 103(a) as unpatentable over Callowhill; Claims 28 and 29 were rejected under 35 U.S.C. § 103(a) as unpatentable over Callowhill in view of Johnson (U.S. Patent No. 1,507,117); and Claims 22 and 23 were rejected under 35 U.S.C. § 103(a) as unpatentable over Callowhill in view of Dreschler (U.S. Patent No. 6,071,503).

Claims 33 and 34 were objected to, but indicated as allowable if rewritten in independent form. The indication of allowable subject matter is gratefully acknowledged. In response to the indication of allowable subject matter, Claim 33 is presently rewritten in independent form including all of the limitations of the base Claim 24 and intervening Claim 32. Accordingly, it is respectfully submitted that amended independent Claim 33 is presently allowable as acknowledged in the Office Action. Dependent Claim 34, which depends from amended independent Claim 33, is therefore allowable for at least the same reasons as amended independent Claim 33.

Also in response to the indication of allowable subject matter, new Claims 63-65 are added. New Claims 63-65 recite features similar to those indicated as allowable in the Office Action. New Claim 63 depends from amended Claim 1 and recites features similar to those

recited in Claims 32 and 33 as originally filed. New Claim 64 depends from Claim 63, and recites features similar to those recited in Claim 34 as originally filed. New Claim 65 combines independent Claim 1 as originally filed with features similar to those recited in Claims 32 and 33 as originally filed. Accordingly, new Claims 63-65 are believed to be allowable for similar reasons to those discussed with respect to new independent Claim 33.

Although Claim 18 was listed as rejected in the Office Action Summary, the Office Action does not provide grounds for this rejection. It is unclear to Applicant how the art of record is believed to disclose or render obvious the features recited in dependent Claim 18, particularly in combination with independent Claim 1 as previously presented. Accordingly, any future rejection of dependent Claim 18 would be viewed as a new grounds for rejection.

Claims 1, 12, and 24 are also presently amended. These amendments find support in the disclosure as originally filed and thus do not raise any questions of new matter.¹

Claims 59-62 are presently added. New Claims 59 and 61 find support at paragraphs [0028]-[0031] of the specification as originally filed with reference to Figure 1, for example. New Claim 60 finds support at least at paragraph [0031] of the specification as originally filed. New Claim 62 finds support at least at paragraph [0028] of the specification as originally filed, with reference to Figure 1, for example.

In response to the rejection of independent Claim 1 as alternately anticipated by Callowhill or Hamilton, in light of the present amendment to Claim 1, Applicant respectfully traverses these rejections, as discussed next.

Briefly recapitulating, Applicants invention as recited in Claim 1 relates to a case. The case includes a base part holding a reserve of product, a lid covering the base part, and a sealing element arranged to close in a leak tight manner a space containing the product, at least when the lid is closed. The sealing element is supported by a pivot incorporating a ball

¹ See, for example, the originally filed specification at paragraphs [0028]-[0031] with reference to Figure 1.

joint so that said sealing element is rotatable about at least two mutually perpendicular geometrical axes of rotation. Claim 1 as amended also recites *the pivot is supported by a first element pivotable with respect to the base part about a pivot axis*.

Turning to the applied references, Callowhill describes a loose powder container. As illustrated in Figure 4, Callowhill describes that the powder container is formed by a ring 5, a disk 7 and the body of the case.² The powder container also includes a cup-like compartment 10.³ A control member 12 is pivoted at its center at an element 14 to the disk 7.⁴

However, Callowhill fails to describe a pivot that is supported by a first element *that is pivotable with respect to a base part* about a pivot axis. The outstanding Office Action characterizes the control member 12 as a sealing member. As noted above, the control member 12 is pivoted at its center at the element 14 to the disk 7. However, this element 14 is not supported by a first element that is pivotable with respect to a base part. As illustrated in Figure 4, element 14 is supported by member 7, which is soldered to the ring 5.⁵ Callowhill further describes that the ring 5 is in close engagement with the bottom of the case.⁶ Thus, element 14 is not supported by a first element that is pivotable with respect to a base part about a pivot axis, as presently claimed.

Additionally, Callowhill fails to describe a sealing element supported by a pivot incorporating a ball joint so that the sealing element is rotatable about *at least two* mutually perpendicular axes of rotation. The outstanding Office Action characterizes the control member 12 as a sealing member and asserts “the sealing member being support by a pivot incorporating ball joint (14) so that the sealing member inherently being rotatable about at least two mutually perpendicular axes of rotation.”⁷

² See Callowhill, at page 1, lines 49-54.

³ See Callowhill, at page 1, lines 57-60.

⁴ See Callowhill, at page 1, lines 66-73.

⁵ See Callowhill, at page 1, lines 44-59, with reference to Figure 4.

⁶ See Callowhill, at page 1, lines 49-54.

⁷ See the outstanding Office Action at page 2.

As such, the inherency assertion of the Office Action can only be based upon speculation. The fact that Callowhill describes that the disk 12 is pivoted at its center to the member 7 does not demonstrate that the disk 12 is rotatable about *at least two* mutually perpendicular axes of rotation as presently recited in Claim 1. Moreover, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of the result or characteristic. *In Re Rijckaert*, 28 USPQ 2d, 1955, 1957 (Fed. Cir. 1993) (See MPEP § 2112). To this end, “[i]n relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *In Re Levy*, 17 USPQ 2d 1461, 1464 (B.O.P.A. 1990) (MPEP § 2112). The Official Action provides no such factual basis or technical reasoning. To the contrary, although the disk 12 may be rotatable relative to the member 7 about a vertical axis that passes through its center at element 14, Callowhill describes that the “control member 12 is in the form of a flat disk which has its marginal edge turned downwardly so as to closely fit in the channel 9 and provide a seal therewith so as to prevent leakage of powder,”⁸ which would prevent the disk 12 from being rotatable about a second axis that is mutually perpendicular to the vertical axis. Thus Callowhill fails to describe a sealing element supported by a pivot incorporating a ball joint so that the sealing element is rotatable about *at least two* mutually perpendicular axes of rotation.

Turning now to Hamilton, Hamilton is directed to a liquid container. As illustrated in Figure 3, Hamilton describes a cap 18, a lid 25, and a spring member 30. The lid 25 is positioned in the cap 18 between the spring member 30 and an annular lip 20 of the cap.

Hamilton also fails to describe a pivot that is supported by a first element *that is pivotable with respect to a base part* about a pivot axis. The outstanding Office Action

⁸ See Callowhill, at page 1, lines 62-66.

equates the lid 25 to a sealing member and characterizes the pin 35 shown in Figures 3 and 4 of Hamilton as a pivot incorporating a ball joint. As illustrated in Figure 3, the pin 35 is part of a spring member 30, which includes an annular ring 31 and four radial arms 32 extending from a hub 33 to the ring.⁹ The top of the hub 33 is formed into an extension or pin 35 which engages a mating detent 36 provided in the lid 25.¹⁰ The ring 31 snaps into an annular channel 37 provided in the interior of the cap 18.¹¹ Hamilton further describes that the container body and the cap 18 are both threaded to allow the cap to be screwed onto the container body. Thus, the pin 35 is supported by the cap 18, which is screwed onto the container body, and is not a pivot that is supported by a first element *that is pivotable with respect to a base part* about a pivot axis.

Accordingly, as neither Callowhill nor Hamilton describe every element of Claim 1 as presently amended, Applicant respectfully requests that the rejections of Claim 1 and all claims depending therefrom based on either Callowhill or Hamilton be withdrawn.

In response to the rejection of independent Claim 24 as anticipated by Callowhill, in light of the present amendment to Claim 24, Applicant respectfully traverses this rejection, as discussed next.

Claim 24 as presently amended also relates to a case. The case includes a base with a first compartment and a second compartment. The case also includes a lid coupled to the base and movable to a closed lid position in which the lid covers the base and a cover member. The cover member is movable from an open position, in which the first and second compartments are not covered by the cover member, to a closed position, in which the first compartment is covered by the cover member and the second compartment is not covered by the cover member. Claim 24 as presently amended also recites that *the cover member is*

⁹ See Hamilton, at column 2, lines 65-66.

¹⁰ See Hamilton, at column 3, lines 1-3.

¹¹ See Hamilton, at column 3, lines 3-4.

coupled to the lid so that the cover member is always in the closed position when the lid is in the closed lid position.

As can be seen in Figures 1-3, Callowhill describes that the control member 12 includes an opening 19. The control member 12 can be rotated such that the opening 19 is aligned with one of: a cup-like compartment 10, a circular cut-out 18, or a circular perforation area 17. In this configuration, the control member can be in an open position (with the cut-out 18 or circular perforation 17 aligned with the opening 19) regardless of whether the hinged cover 2 is in an open position or a closed position. Thus, Callowhill does not describe a cover member that is coupled to the lid so that *the cover member is always in the closed position when the lid is in the closed lid position*, as presently claimed. Accordingly, Applicant respectfully requests that the rejection of Claim 24, and all claims depending therefrom, be withdrawn.

With respect to the rejection of dependent Claims 28 and 29 as unpatentable over Callowhill in view of Johnson, Johnson fails to cure the deficiencies in Callowhill discussed above. Therefore, dependent Claims 28 and 29 patentably define over the art of record for at least the same reasons as Claim 24 from which they depend, and Applicant respectfully requests that the rejection of dependent Claims 28 and 29 be withdrawn.

With respect to the rejection of Claims 22 and 23 as unpatentable over Callowhill in view of Dreschler, Dreschler fails to cure the deficiencies in Callowhill discussed above. Therefore, dependent Claims 22 and 23 patentably define over the art of record for at least the same reasons as independent Claim 1 from which they depend, and Applicant respectfully requests that the rejection of dependent Claims 22 and 23 be withdrawn.

New Claims 59-62 recite features that further patentably define over the art of record. The art of record fails to disclose or render obvious that the sealing element recited in Claim 1 is movable from an open position to a closed position by pivoting the first element about

the pivot axis (Claim 59). Callowhill, for example, describes that the control member 12 is movable from an open position to a closed position by rotating the control member 12, not by pivoting the first element recited Claim 1. The art of record also fails to disclose or render obvious that the sealing element recited in Claim 1 is configured to prevent evaporation of the product in a closed position (Claim 60). Hamilton, for example, describes that there is a gap between the lid 29 and the lip 22 of the cap 18 (see Figure 3). Hamilton describes that the “gap such as that described provides a means for gas to escape from the container.”¹² Such a configuration does not prevent evaporation of the product in a closed position, as presently claimed. Additionally, the art of record does not disclose or render obvious that the case recited in Claim 1 in which the sealing element is coupled to said element such that the space is always closed by the sealing element when said lid is closed (Claim 61) or that, in combination with the features of Claim 1, the lid recited in Claim 1 is pivoted to the base part by a hinge about the pivot axis (Claim 62). Accordingly, Claims 59-62 are believed to be in condition for allowance.

With regard to withdrawn Claims 12-14 and 17, it is respectfully requested that these claims be rejoined and allowed in accordance with MPEP §821.04, as Claims 12-14 and 17 include the subject matter recited in amended independent Claim 1 which is believed to be allowable.

Consequently, for the reasons discussed in detail above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 1-65 is earnestly solicited.

¹² See Hamilton, at column 3, lines 5-11.

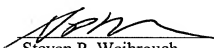
Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact the undersigned representative at the below listed telephone number.

Respectfully submitted,

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